



Fact Sheet on the Digital Markets Act

Digital Markets Act

The EU's Digital Markets Act (DMA) imposes far-reaching *ex ante* obligations on the largest digital platforms, so-called "gatekeepers." It applies in parallel with antitrust rules, national regulation (which can go beyond the DMA), and other EU regulations such as the General Data Protection Regulation. It has significant implications not only for gatekeepers, but also any companies doing business with them, i.e., business users.¹



Who Are the Gatekeepers?

The DMA applies to digital platforms that offer "Core Platform Services" (CPSs)² and have been designated as gatekeepers. There is a rebuttable presumption that a platform is a gatekeeper if the following quantitative thresholds are met:



Significant impact on the internal market—an annual EU revenue of at least €7.5 billion (ca. \$8 billion) in each of the last three financial years, or an average market capitalization of at least €75 billion (ca. \$80 billion)



CPS which is an important gateway for business users to reach end users—at least 45 million monthly end users and 10,000 annual business users in the EU



An entrenched and durable position (or foreseeably will have in the near future)—each of the other thresholds were met in the three previous years

Even if a company does not reach the quantitative thresholds, it can still be designated following a European Commission (EC) market investigation which otherwise demonstrates these factors. The EC can also use market investigations to propose additional categories of CPSs or new obligations.

On September 5, 2023, the EC adopted its first wave of decisions designating six tech companies as gatekeepers and covering 22 CPSs (see the EC's [press release](#) for the full list). This started a six-month compliance countdown (by March 2024).

More gatekeepers and CPSs may be designated in the near future. The EC is conducting market investigations into services provided by Microsoft (Bing, Edge, and Microsoft Advertising) and Apple (iMessage, iPadOS).

¹"Business user" is defined as any natural or legal person acting in a commercial or professional capacity using CPSs for the purpose of, or in the course of, providing goods or services to end users.

² Current CPSs include: online intermediation services such as app stores and marketplaces, online search engines, social networking services, video sharing platform services, certain messaging services, operating systems, web browsers, virtual assistants, cloud computing services, and advertising services.

DMA Obligations

The DMA sets out a list of *ex-ante* conduct obligations and prohibitions for gatekeepers, including rules related to interoperability, data combination, data access by business users or rivals, use of platform data, ad transparency, and self-preferencing. For instance, gatekeepers must:

- give third-party service and hardware providers interoperability with, and access to, the same hardware and software features controlled by the CPS operating system or virtual assistant as those available to its own services (Art. 6(7));
- allow effective interoperability of the basic functionalities of their number-independent interpersonal communication services with those of competing platforms (Art. 7(1));
- allow developers that distribute apps on their app stores to promote offers available from alternative third-party sources to end users (Art. 5(4));
- allow users to access and use content, subscriptions, features, and other items acquired without using the CPS (Art. 5(5));
- refrain from using nonpublic data of business users, collected by its CPS, to compete against the business users on the platform (Art. 6(2));
- give business users access to continuous and real time data on their use of the CPS, including data on their end users' engagement on that platform (Art. 6(10)); and
- rank their own and third-party services or products in a nondiscriminatory manner (Art. 6(5)).



As of designation, two obligations immediately kick in: 1) gatekeepers must establish a dedicated compliance function internally, and 2) gatekeepers must inform the EC of intended M&A where it involves a CPS or any other services in the digital sector or enables the collection of data. Gatekeepers have six months from designation to: 1) fully comply with the conduct obligations relevant to the CPS, and 2) prepare a detailed compliance report outlining the measures put in place. A nonconfidential summary of this report will be published, allowing third parties to raise compliance concerns with the EC.

For more information on the DMA's designation process and obligations, see our previous [Wilson Sonsini Alert](#). For more information on the data protection aspects of the DMA, see our separate [Wilson Sonsini Fact Sheet](#).

Enforcement, Fines, and Damage Claims

The EC is the sole enforcer of the DMA and has significant enforcement powers. It can levy fines of up to 10 percent of the company's total worldwide annual turnover, and up to 20 percent in the case of repeated infringements. In case of systematic noncompliance (i.e., three violations in eight years), the EC can order remedies, including forced divestments and company break-ups.

Any person harmed by DMA noncompliant conduct of gatekeepers can also bring direct actions for damages in national courts.



For any questions about the DMA, please contact [Jindrich Kloub](#) or [Deirdre Carroll](#) from Wilson Sonsini's [antitrust and competition practice](#) and [Cédric Burton](#) from Wilson Sonsini's [privacy and cybersecurity practice](#).

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